sibility of post-testamentary declarations disclosing intention, where it can be said that such declarations manifest an intention which has been previously formed but which has endured to the time of the declaration. These subsequent declarations, however, are objectionable upon other grounds; their unreliability because of their probable falsity, a strong probability where acts previously performed may be undone by parol declaration. This, moreover, is especially true concerning testamentary disposition of property because of the general capriciousness of testators and their proneness to alter their testatamentary purpose on slight provocation. If, however, for any reason, this objection does not obtain in a given case, post-testamentary declarations are as admissible as those preceding execution, if not too remote.[12] This, it is conceived, is the case, when such declarations exhibit an intention which accords with that shown to have previously existed, and are corroborative evidence of a testamentary plan. Such declarations furnishing corroborative evidence, moreover, are not only admissible, but are virtually imperative when it is sought to establish a normal testamentary purpose as distinguished from the proof of mental capacity.[13] Normal testamentary purpose so established is often of great importance. Thus, in the case of a lost will, proof of it may suffice to establish the contents of the will,[14] and, in a case where duress is extrinsically proved, a deviation in the will exhibited, from the established post-testamentary purpose tends to prove that the duress was effective.[15]

JURISDICTION OF BANKRUPTCY OVER INFANTS.—The National Bankruptcy Act applies to all persons who owe debts. To determine whether a particular class of persons comes under the provisions of the law, it, therefore, becomes necessary to decide whether the individuals included within that class do owe debts. Thus, previous to the enactment of the Married Women's Property Acts, it was generally held that a *femme covert* could not be declared a bankrupt, as she was incapable of contracting debts.[1] Since the old English bankruptcy laws were applicable to traders only,[2] the cases decided under these statutes also laid down the rule that infants could not become bankrupts.[3] Although these holdings have generally been interpreted as due to this peculiar provision of the statutes rather than to the general principles of law relating to the obligations of infants, yet it seems that in the last analysis the objection goes back to the fact that infants were not absolutely liable on their trade debts. Neither were they able to take advantage of the insolvency statute, inasmuch as they could not execute a valid warrant of at-

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[12]McDonald *et al. v.* McDonald *et al.* (1895) 142 Ind. 55; McBeth *v.* McBeth (1847) 11 Ala. 596; Sugden *v.* Lord St. Leonards *supra.*

[13]3 Wigmore § 1738 b.

[14]Sugden *v.* Lord St. Leonards *supra.*

[15]Shailer *v.* Bumstead *et al. supra.*

[1]Lowell, Bankruptcy § 15.

[2]*Re* Smedley (1864) 10 L. T. [N. S.] 432; *Ex parte* Stevenson (1868) 19 L. T. [N. S.] 23.

[3]Rex *v.* Cole (1700) 1 Raym. 443; *Ex parte* Sydebotham (1742) 1 Atk. 146.

torney, as required by the law.[4] Moreover, since a commission of bankruptcy against an infant was absolutely void, not merely voidable,[5] a writ of *supersedeas* could issue aginst it.[6] Since, however, the bankruptcy jurisdiction was regarded as equitable,[7] the writ has been refused where the infant had engaged in trade and had represented himself as an adult;[8] and the petitioner in that case was left to his remedy at law. Such cases are not necessarily in conflict with the general rule, as they do not hold that the infant can be declared a bankrupt, but simply refuse to grant equitable relief on a ground in the nature of an estoppel. The principle is, however, limited to those instances in which there had been an actual misrepresentation as to age, the mere fact that the infant had been a trader not being regarded as sufficient.[9]

Moreover, where the case involved a partnership one of whose members was an infant, a joint commission of bankruptcy could not issue against the remaining partners.[10] The modern English practice is, however, to allow a judgment against the firm "other than" the infant partner, or against the remaining members of the partnership.[11] In the United States courts, inasmuch as under the bankruptcy statute a partnership is regarded as an entity,[12] it can be adjudged bankrupt even though no judgment can be rendered against one of the partners on account of his infancy. Separate adjudications can also be made against the adult members of the firm.[13]

Under the modern English and American laws there are no technical difficulties to prevent adjudications against infants, and it is generally held that in those instances in which an infant is absolutely bound to pay his debts, he comes within the terms of the bankruptcy statutes.[14] The most common class of debts for which an infant is absolutely liable consists of contracts for necessaries. Although no cases seem to have been decided directly on that point, there are numerous judicial *dicta* implying that an infant can be declared bankrupt as to debts contracted for necessaries.[15] Similarly, it has also been held that where a statute makes an infant engaging in trade as an adult absolutely liable on his contracts, he can be adjudged a bankrupt as to such debts.[16]

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[4]*Re* Smedley *supra; Ex parte* Stevenson *supra.*

[5]Belton *v.* Hodges (1832) 2 Moore & Scott 496; O'Brien *v.* Currie (1828) 3 Carr. & P. 283.

[6]*Ex parte* Sydebotham *supra; Ex parte* Hehir (1833) 3 Deac. & Chit. 107; *Ex parte* Lees (1836) 1 Deac. 705.

[7]Collier, Bankruptcy (6th ed.) 13.

[8]*Ex parte* Watson (1809) 16 Ves. 265; *Ex parte* Unity etc. Banking Ass'n. (1858) 3 De Gex & J. 63.

[9]Maclean *v.* Dummett (1869) 22 L. T. [N. S.] 710.

[10]*Ex parte* Henderson (1796) 4 Ves. 163; *Ex parte* Barwis (1802) 6 Ves. 601; *Ex parte* Layton (1801) 6 Ves. 433, 440.

[11]Lovell *v.* Beauchamp L. R. [1894] App. Cas. 607.

[12]Collier, Bankruptcy (6th ed.) 75-6.

[13]*In re* Dunnigan (1899) 95 Fed. 428; *In re* Duguid (1900) 100 Fed. 274.

[14]*Re* Smedley *supra; Ex parte* Stevenson *supra; In re* Book (1843) Fed. Cas. No. 1637.

[15]In the Matter of Derby (1872) 6 Ben. 232; *In re* Penzansky (1902) 8 Am. Bank. Rep. 99.

[16]*In re* Brice (1899) 93 Fed. 942.

Another class of debts which an infant cannot dissaffirm consists of judgments obtained against him.[17] Consequently, infants have been allowed to take advantage of the bankruptcy statutes as to judgments outstanding against them for a breach of promise of marriage,[18] or for a tort.[19] This principle has been applied in a recent case, *In re Walrath* (D. C., N. D. N. Y. 1910) 175 Fed. 243, in which an infant was granted a discharge in voluntary bankruptcy as to a judgment obtained against him in an action for negligence, the court holding that though an infant may not be entitled to the benefits of the bankruptcy law as to his voidable contracts, he can, nevertheless, be declared a bankrupt whenever he owes debts with which his property is legally chargeable.

The distinction made in the principal case is generally followed, and it is held than an infant cannot be declared a bankrupt as to his voidable contracts.[20] Although it has been suggested that infancy is a personal defense, yet inasmuch as the rule applies in proceedings for voluntary as well as involuntary bankruptcy,[21] it seems to operate rather as an absolute bar to an adjudication. It would seem, however, that on strict theory since an infant's contracts are valid unless disaffirmed by him,[22] the provisions of the bankruptcy statutes should apply to infants even in this class of cases. Against such an interpretation of the laws there is, however, a very strong argument of public policy in the fact that the infant may set the whole proceeding at naught by a later disaffirmance of his obligations,[23] and therefore, the rule that an infant cannot be adjudged bankrupt as to his voidable contracts is based on sound reason. In the same way, it is generally said than an infant cannot commit an act of bankruptcy inasmuch as any transfer of property that he makes, may later be disaffirmed by him.[24] Although on strict legal theory a transfer of property by an infant is valid unless avoided by him,[25] yet the same insuperable objection exists in this case as is found where it is attempted to declare an infant bankrupt as to his voidable contracts.

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[17]Cooley, Torts (2nd ed.) 120.

[18]*In re* Penzansky *supra.*

[19]*Re* Smedley *supra; Ex parte* Hands (1867) 15 Weekly Rep. 1089; People *v.* Mullin (N. Y. 1841) 25 Wend. 698.

[20]*Ex parte* Jones (1881) L. R. 18 Ch. Div. 109; *In re* Soltykoff (1891) L. R. 1 Q. B. 413; In the Matter of Derby *supra; In re* Eidemiller (1900) 105 Fed. 595.

[21]In the Matter of Derby *supra.*

[22]Thompson *v.* Hamilton (Mass. 1832) 12 Pick. 425; Slocum *v.* Hooker (N. Y. 1852) 13 Barb. 536; Pollock, Contracts (4th ed.) 132.

[23]In the Matter of Derby *supra.*

[24]In the Matter of Derby *supra.*

[25]Soper *v.* Fry (1877) 37 Mich. 236; Yates *v.* Lyon (1874) 61 N. Y. 344